

THE ROMAN CATHOLIC MILITARY VICAR
FOR THE ARMED FORCES OF THE
UNITED STATES OF AMERICA

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THESIS

THE ROMAN CATHOLIC MILITARY VICAR
FOR THE ARMED FORCES OF THE
UNITED STATES OF AMERICA

by

Donald Bruce Reese

March 1975

Thesis Advisor:

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T168185

REPORT DOCUMENTATION PAGE		READ INSTRUCTIONS BEFORE COMPLETING FORM
1. REPORT NUMBER	2. GOVT ACCESSION NO.	3. RECIPIENT'S CATALOG NUMBER
4. TITLE (and Subtitle) The Roman Catholic Military Vicar for the Armed Forces of the United States of America		5. TYPE OF REPORT & PERIOD COVERED Master's Thesis; March 1975
7. AUTHOR(s) Donald Bruce Reese		6. PERFORMING ORG. REPORT NUMBER
9. PERFORMING ORGANIZATION NAME AND ADDRESS Naval Postgraduate School Monterey, California 93940		8. CONTRACT OR GRANT NUMBER(s)
11. CONTROLLING OFFICE NAME AND ADDRESS Naval Postgraduate School Monterey, California 93940		10. PROGRAM ELEMENT, PROJECT, TASK AREA & WORK UNIT NUMBERS
14. MONITORING AGENCY NAME & ADDRESS (if different from Controlling Office)		12. REPORT DATE March 1975
		13. NUMBER OF PAGES 65
		15. SECURITY CLASS. (of this report) Unclassified
		15a. DECLASSIFICATION/DOWNGRADING SCHEDULE
16. DISTRIBUTION STATEMENT (of this Report) Approved for public release; distribution unlimited		
17. DISTRIBUTION STATEMENT (of the abstract entered in Block 20, if different from Report)		
18. SUPPLEMENTARY NOTES		
19. KEY WORDS (Continue on reverse side if necessary and identify by block number) Roman Catholic Military Vicar		
20. ABSTRACT (Continue on reverse side if necessary and identify by block number) The Roman Catholic Military Vicar for the Armed Forces of the United States examines the span of control of this office as defined by ecclesiastical law and civil law. The first avenue of investigation defines the ecclesiastical jurisdiction exercised over the subjects of the Military Vicar to establish his role in the exercise of their religion by Roman Catholics in the armed forces and other federal agencies. The second line		

(20. ABSTRACT Continued)

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The Roman Catholic Military Vicar
for the Armed Forces of the
United States of America

by

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Submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE IN MANAGEMENT

from the
NAVAL POSTGRADUATE SCHOOL
March 1975

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ABSTRACT

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I. INTRODUCTION

On 3 October 1973 the new Chaplains Manual for the Chaplain Corps of the U. S. Navy was issued as OPNAV INSTRUCTION 1730.1 [9]. Paragraphs 1202 and 1203 of this instruction deal with the chaplain as a professional representative of his church and as a Naval officer. They are cited herewith to establish an approach for this thesis:

1202. The Chaplain as a Professional Representative of His Church

1. The term "professional" as used in this manual refers to those aspects of the chaplain's role which are determined not by the Navy, Marine Corps, or Coast Guard, but by the chaplain's identity as a member of the clergy whose profession is the ministry of religion.

2. The Navy does not generate religious ministry. It receives ministries from the churches and religious bodies of American in accordance with the religiously pluralistic pattern of American society. The United States Code provides that:

An officer of the Chaplain Corps may conduct public worship according to the manner and forms of the church of which he is a member. 10 U.S.C. 6031 (a).

The term "church" as used in this manual is used to include denominations and religious bodies of all faiths.

3. Since all liturgical, sacramental, and pastoral acts are performed on the basis of ecclesiastical rather than naval credentials, it follows that the ultimate responsibility for the substantive nature of chaplains religious ministry rests with their churches.

4. The maintenance of ecclesiastical credentials (i.e., status as an ordained member of the clergy and a valid ecclesiastical endorsement) is the official responsibility of each chaplain.

1203. The Chaplain as a Naval Officer

1. The chaplains' relationship to their churches, as the source of ecclesiastical credentials, does not exist in isolation from an equally binding relationship to the Navy. In accepting a Naval commission a member of the clergy acknowledges military command, accepts the principle of command responsibility for the spiritual and moral welfare of naval personnel, and is subject to military regulations and directives and the Uniform Code of Military Justice. In return, the Navy grants the chaplain the right of conducting ministry not as an outsider visiting a naval activity, but as a member of the Navy community, involved in its whole life and responding to its total needs.

2. In the act of endorsing their clergy for Navy commissions, the churches of America accept the placing of their ordained representatives under military command, subjection of those so endorsed to military regulations and directives, to the principle of command responsibility for the spiritual and moral welfare of naval personnel, and the necessity of co-operative ministry. In return the churches receive the right of extending their ministries to Navy, Marine Corps, and Coast Guard personnel.

3. While the chaplain's ecclesiastical credentials derive solely from the chaplain's church and the substantive nature of this ministry is determined by that church, the conditions for this ministry are determined by the naval service. As a naval officer the chaplain is obligated to:

a. Provide ministry within the framework of the religious program sponsored by the commanding officer.

b. Adapt this ministry to the conditions of the naval service.

c. Conduct this ministry in coordination with the ministries of other chaplains, according to the pattern of cooperative ministry evolved by the churches and the Navy.

d. Design this ministry to meet the religious needs of the personnel of the command, their dependents, and other authorized persons. [9]

The Military Vicariate, or Military Ordinariate as it is also termed, is that agency of the Roman Catholic Church which determines the substantive nature of the religious ministry of chaplains and endorses the ecclesiastical

credentials of all Roman Catholic chaplains in the Navy, as well as in other federal agencies. This implies an aspect of span of control termed jurisdiction. In the present case this jurisdiction is determined by canon and civil law. It is the intention of this thesis through an investigation of the nature of this jurisdiction to aid the professionalism of Catholic chaplains in the Navy by providing a better understanding of their ecclesiastical management. Mutatis mutandis, much of what is said applies to all chaplains in all services as regards endorsing agents, and to all Roman Catholics in all federal agencies as regards their ecclesiastical status. In addition, since spiritual welfare of personnel is a command responsibility, the information in this thesis can shed light on both command responsibility and prerogative as they affect Catholic chaplains and personnel.

This investigation follows two lines: The first examines various recent decrees of the Holy See, the canons which apply to them, and their interpretation by various commentators. This is to clarify the ecclesiastical nature of the office. That there is a basis for confusion is evidenced in the apparent interchangeability of the terms vicariate and ordinariate, each of which has precise distinctions and differences elsewhere in ecclesiastical terminology. There is also the more common confusion of role identification among Catholic military personnel. As civilians they identified with their local bishop in the hierarchical linkage

that is essential to their beliefs, practices, and history. The absence of the term "bishop" in the official title of the Military Vicar can give rise to the question "Who is my bishop?" for any Catholic member of the peripatetic armed forces. This thesis attempts to answer that question.

The second line of investigation examines current civil statutes and government (i.e. military) regulations to determine the extent to which these things define the Military Vicar's control. In this area there is, perhaps, not so much confusion as sensitivity to the principle of separation of church and state.

A brief historical sketch of the evolution of certain aspects of the military chaplaincy germane to this thesis is included to provide background and context.

English translations of the Latin texts of documents central to the development of ecclesiastical jurisdiction are included as appendices.

II. HISTORICAL DEVELOPMENT

The Old Testament contains many instances of the close association of priests, prophets and preachers with warriors. The story of the Hebrew victory while Moses held up his hands is well known (Exodus 17:8-16). Priests blew the trumpets in Joshua's seizure of Jerico (Joshua 6:1-20). They carried the ark into battle when David was battling the Philistines (1 Kings 4:3). Judas Machabeus availed himself of priestly ministrations before routing the king's armies (1 Machabees 3:47).

Priests and bishops are known to have been part of the armies of Constantine the Great [16]; and the Cura Castrensis with priests, deacons and subdeacons dependent on the local bishop are mentioned in the Decrees of Gratian [12].

According to standard encyclopedia entries, the term chaplain historically preceded the precise function currently attributed to chaplains. From its first use, the word was applied to clerics, and apparently to clerics assigned to some military duty. Chaplain is derived from the Latin capella, which can mean either a cloak or a small tent-like house. One tradition specualtes that a priest was the custodian of the cloak of St. Martin of Tours during battle. The French kings were accustomed to take this sacred relic with them on military campaigns. It is also held that chaplains were so named because of the canopy or cloak-tent

underneath which these kings placed altars for field services and for security of relics of their patron saints while battle was in progress. At any rate, those clerics who had custody of the relics in the courts of the French nobles were called "chaplains". When their number threatened to become unmanageable, they were made subject to an arch-chaplain, le grand-almoner, who might be called the forerunner of the Military Vicar. From the time of Charlemagne this prerogative was vested in bishops and abbots, who consequently assumed great importance in affairs of state [17,36,38].

The increase of chaplains brought about action by the Council of Ratisbon in 742 to recognize military service as proper work for a priest. Canon 2 reads:

We prohibit the servant of God in every way from bearing arms or fighting in the army or going against the enemy, except those alone who because of their sacred office, namely for the celebrating of Mass and caring for the relics of the saints, have been designated for this office; that is to say, the leader may have with him one or two bishops with their priest chaplains, and each captain may have one priest, in order to hear the confessions of the men and impose upon them the proper penance. [12]

This is important not only because it recognized the non-combatant status of chaplains, later emphasized by the Geneva Convention of 1864, but also because it specifies the main function of a chaplain - ministry to individual troops - and implies the jurisdiction to grant the faculties necessary to function.

Alessandro Cardinal Farnese is said to have been the first to create military chaplains as we know them; in 1587

he established a permanent corps of twenty-five army chaplains. Since then the term chaplain as applied to military forces has come to be limited in proper usage to clerics ecclesiastically and/or legally delegated to attend to the spiritual needs of a military unit [18].

As regards the United States, in the colonial period some governors appointed chaplains to colonial military units, while in some colonies the legislature did this or the established church of the colony made the selection and appointment. At times, the brigade officers themselves chose them, as ship's captains often did in the Navy [15,20,21].

The legal origin of the Chaplain Corps with the Continental Army and Navy is to be found in the provisions of the Continental Congress. On 29 July 1775 they provided that the pay of a chaplain be that of a captain [20]. The second article of Navy Regulations adopted by the Continental Congress 28 November 1775 made provision for divine services afloate, which implies ordained clergymen on board [9].

There are no records available to show that there were any Catholic chaplains in the military forces of colonies at the beginning of the Revolutionary War. It is presumed that the units that came from abroad to help the cause of the colonies brought their own priests with them [19]. However in 1776 through the efforts of a Congressional mission, of which Father (later Bishop) Carroll was a member, two regiments of Canadian volunteers were formed to support the colonial cause. Bishop Briand of Quebec had forbidden his

flock to aid the Americans and had threatened any who would join the Continental Army with the severest ecclesiastical censures. One of those regiments had a chaplain appointed to it, Father Louis Eustace Lotbiniere, by authority of General Benedict Arnold and General Montgomery, and confirmed by the Continental Congress. Thus, this French-Canadian priest, although under the bann of excommunication as a priest of the diocese of Quebec, became the first commissioned Catholic Chaplain in any American armed force [8,18,19,20,40].

It is not the intention of this thesis to become embroiled in the dispute over Father Lotbiniere's intentions and motives. The point of interest here lies in what faculties he enjoyed and how they were granted. Unfortunately, there is no evidence for anything but conjecture. At that time it had long been the common law of the Catholic Church to permit even to excommunicated priests the faculty of granting absolution to those in danger of death [2,4,5]. It is also to be noted that these Canadian troops had given up their country and sworn allegiance to the United States, Father Lotbiniere with them. Consequently, they were not under the jurisdiction of the Bishop of Quebec. During this period faculties could have been granted by the Vicar Apostolic of London whose jurisdiction included the Colonies, or by the Superior of the Jesuits in Maryland who had the privilege from Rome for priests of the American mission [18].

The civil law was void of any requirements for ecclesiastical endorsement for chaplains up to the end of the

nineteenth century. More often than not chaplains secured commissions and appointments by direct application to the President and/or to the appropriate Secretary, together with political machinations and letters of recommendation supplied by the candidate himself [47]. In the early Navy it was common practice to use unordained men as chaplains, albeit none as Catholic chaplains [15].

There are no records, official or otherwise, that there were commissioned Catholic chaplains in either the U.S. Army or Navy during the War of 1812. However it is reasonable to assume that since this was primarily a naval war, any Catholic priests who might have been on ships received their faculties from the ordinary (bishop) in whose territory the home port lay, again the common practice of the Catholic Church. Further, in all probability local Catholic priests administered the duties of chaplains during the battle of New Orleans [18].

In 1823 Secretary of the Navy Samuel Southard directed that only ordained clergymen be appointed chaplains. This was incorporated into Navy Regulations in 1841 [15].

In 1846 during the Mexican War, there were still no commissioned Catholic chaplains in either the Army or Navy. However, President Polk, acting as Commander in Chief, decided to assign Catholic chaplains to the Army at large, not to specific regiments by way of official commission, in an effort to assure Mexicans that their religion and church property would be respected, secure under the American

constitution, and protected by the Army. President Polk invited Bishop Hughes of New York, Bishop Kenrick of St. Louis, and Bishop Portier of Mobile, to Washington for a conference on the appointment of Catholic priests as unofficial, non-commissioned Army chaplains. This resulted in the assignment of two Jesuits, one of whom was later killed by Mexican guerillas. Obviously there was both ecclesiastical endorsement as well as full faculties to minister [18,28,36].

Shortly after the Mexican War, Catholic chaplains were regularly appointed to the Army. The first officially commissioned Catholic chaplain in the Army since the Revolutionary War was the Rev. Samuel H. Milley, who served as post chaplain at Monterey, California, from 28 September 1849 to February 1850 [20].

By the time of the Civil War, Congress acted to provide many more commissioned officer chaplains for the Army. Early in August 1861 Acts 22 and 38 empowered President Lincoln to provide for the selection and appointment of chaplains for each regiment, with the proviso that only a regularly ordained minister should be eligible. The President in turn gave to every colonel in command of a regiment the right to choose a chaplain for whom the majority of the field officers and company officers on duty with the regiment had voted.. The candidate thus chosen was reported to the War Department, the chaplain received his official appointment from the War Department, and presented himself to an officer of the Regular Army for muster-in [18,20]. In the Confederacy, although there is

some evidence of denominational endorsement, chaplain appointments and commissions came from colonels of regiments, or by popular acclaim of the troops, or by political influence [18].

However they got in, Catholic chaplains at first still had to apply to proper local ecclesiastical authority for permission to exercise their duties; as soon as a Catholic chaplain left the confines of his own diocese, he had to communicate with the new bishop into whose territory he came if he wished to administer the sacraments licitly and validly in all cases. For Union forces this condition was somewhat eased when Archbishop Kenrick of Baltimore dispatched all his faculties to Archbishop Hughes of New York on 26 April 1861 for communication to those chaplains who were coming down with the troops from New York into the Archdiocese of Baltimore. Then on 15 February 1862 the Holy See granted Archbishop Purcell of Cincinnati extensive faculties to be transmitted to all Catholic chaplains, North and South alike. For the duration of the war this enabled them to exercise their ministry without having recourse to the local ordinary when moving from one diocese to another [3,18,24,39].

Navy Regulations of 1865, 1870 and 1876, all specified ordination as a requirement for appointment to the chaplaincy [15]. However, just as for the Army, there is evidence that endorsement was still very much a matter of letters of recommendation from clergymen. Even in the case of Catholic

clergy, this was not necessarily from a priest's superior or bishop, but could be from his peers. However, from 1876 on, there is documentation of ecclesiastical endorsement being granted by a priests own superior or bishop [18].

The first Catholic chaplain officially commissioned in the Navy was Rev. Charles Henry Park, 30 April 1888, having been endorsed by the Archbidhop of New York [15,18]. It is to be noted that President Polk had requested Bishop Hughes of New York to designate a priest to serve in the Navy in a status similar to that of the two Jesuits with the Army during the Mexican War. Bishop Hughes was unable to spare the priests, and the matter was dropped. Also Father Kilroy of Notre Dame University was offered a chaplaincy in the Navy during the Civil War, but declined [18].

In 1883 during the Forty-seventh Congress, Senate Bill No. 1551 attempted to legislate the necessity of ecclesiastical endorsement for chaplains. However, it was defeated [15]. Denominational awareness of the church's corporate responsibility for religion in the armed forces surfaced nationally for the first time in the Spanish-American War. In 1898 the general convention of the Protestant Episcopal Church recommended that they be consulted by the government before the appointment of any Episcopalian as a chaplain. President William McKinley supported this principle. On 2 March 1899 and 2 February 1901 Congress authorized the requirement for denominational endorsement [47]. In 1905 the Catholic hierarchy of the United States designated the Rev. Alexander P.

Doyle, C.S.P., to act as their representative with the government in the appointment of Catholic chaplains [18]. However, faculties for a Catholic chaplain still had to come from the bishop in whose diocese the chaplain was located [17].

With the outbreak of World War I, the Holy See was quick to grant extraordinary faculties to all Catholic chaplains engaged in the hostilities, wherever they were. Any Catholic chaplain could apply indulgences to sacramentals by a simple sign of the cross, could hear the confession of any soldier or prisoner, could give general absolution to any number of men when there was not time for individual confessions, could celebrate Mass in any decent place when necessary, even underground when this could be done safely and with irreverance, could substitute votive Masses any day instead of the Mass prescribed by the rubrics, could reserve the Blessed Sacrament on war vessels and in military hospitals, could exempt himself from the obligations of the Divine Office if at the front, and so on [45]. It must be remembered that in 1917 the discipline of the Catholic Church was extreme by today's standards and post-Vatican II outlook. In the 1917 context these faculty grants were truly wondrous.

When the United States entered the War on 6 April 1917, there was a tremendous increase in Catholic military personnel and a consequent rapid growth of the number of priests in the services. Confusion was inevitable. Here was a great "diocese" of priests, laymen, and territory, with no regularly

constituted ecclesiastical head to provide uniform advice, instructions, and authorizations.

Realizing the gravity of the situation, on 24 November 1917 Pope Benedict XV appointed the Most Reverend Patrick J. Hayes, then Auxiliary Bishop of New York, to be the first Chaplain Bishop in the United States. The pagella of faculties issued under this authority was quite specific, and for the duration of the war or until separation from the service, effective both in the United States and overseas. The faculties included not only those granted by the Chaplain Bishop in virtue of his ordinary and/or delegated authority, but also those extraordinary privileges previously cited [45].

Although nothing in canon law required it, the fact that New York City was the principal point of embarkation for the battlefields of World War I made it natural that the military ordinariate be located there. Bishop Hayes administered military ecclesiastical matters from the archdiocesan chancery. He laid the foundations there for permanently filing all ecclesiastical records of Catholic chaplains throughout the services wherever they were stationed. This central recording system did much to help every Catholic in the service to feel that his life as a Christian was as much a part of his Church as were the civilian parishes [47].

The Diocesis Castrensis did not end with the close of the war in Europe, although the special faculties which the chaplains had enjoyed were retracted by the Holy See on 22 February 1919 [13]. Since the military forces remained, albeit

not in wartime strength, so did the need for the Military Bishop. Consequently Bishop Hayes carried this office with him through his accession to the archdiocese of New York in 1919 and also as a cardinal in 1924 through to his death in 1938. His successor Francis J. Spellman continued this line, the only difference being that in his initial appointment the Holy See changed the title to that of Military Vicar of the United States [7,33]. This jurisdiction was extended in May and July of 1946 and again in September 1950. The first two extensions added occupation forces and their families residing in occupied countries, and the personnel of the Veterans Administration hospitals and comiciliary institutions, to the list of Roman Catholics under his responsibility. The third one placed all United Nations Catholic chaplains assisting troops in Korea under the ecclesiastical domain of the American ordinariate [34].

In acknowledgement of the permanency of military forces being kept in a state of preparedness, the Holy See issued a general instruction establishing norms for the permanent institution of the military vicariate [25 and Appendix A]. The formal erection of the Military Vicariate of the United States as a permanent institution was effected by the decree Mysticam Petri Naviculam on 8 September 1957 [11,26,42, and Appendix B].

In this fifty-year period of expansion the foregoing is most notable. Up to the emergence of the Catholic ordinariate

which cut across all the services, answerable to ecclesiastical authority outside the military, and perhaps even outside the nation, the image of a visible church was subsumed by the individual chaplain. The Catholic Church, in what had been considered largely a Protestant country, was admirably suited to dramatize the difference between church and state, chaplaincy and military service [14]. This role could not have emerged in the military of a predominantly Catholic country [31].

During this same period equally significant is the emergence of a corps structure in both the Army and the Navy. Navy chaplains brought it about themselves when in 1906 the Secretary appointed a three-man board of chaplains to make recommendations for the improvement of the corps. In 1909 Navy regulations authorized for the first time that the corps itself, through its department-appointed board, screen new applicants for the chaplaincy. Then in 1917 the Secretary of the Navy appointed the first Navy Chief of Chaplains [15]. Similar activity in the Army resulted in the first Army Chief of Chaplains in 1920 with the National Defense Act [20].

In the course of World War II the Army Air Force gained relative autonomy. In 1947 it became an independent department with the National Security Act of 26 July, which also placed the three services on a parity within the new Department of Defense. On 16 May 1949 the Air Force had its first Chief of Chaplains [21,22]. The unification of the services naturally led to the formation of a joint agency to consider matters

of concern to all chaplains. On 18 July 1949 the Armed Forces Chaplain Board was established in the office of the Secretary of Defense. It was composed of the three chiefs plus one other chaplain from each service, with rotation of the chairmanship among the chiefs. One of the specific purposes of the coordination of the three chaplaincies was to pursue a common policy of procurement and attendant qualifications. One of these is the requirement that every applicant must be an ordained clergyman endorsed by a recognized church [15,20,22,43,47].

III. ECCLESIASTICAL JURISDICTION

In the Code of Canon Law, there is but one reference to military ordinaries, and that oblique. Canon 451.3 says that all chaplains, whether major or minor, are to have those powers, rights, and obligations which the Holy See sees fit to give them [10]. Chapter II of this thesis gave a brief resume of how this was accomplished in the past.

Having recognized the permanency of the chaplaincy as a part of the modern cura animarum, on 23 April 1951 the Sacred Consistorial Congregation issued an instruction (cited by its Latin name, Sollemne Semper) concerning the nature and duties of military vicars in general [25 and Appendix A]. Pugliese quite appropriately has termed this "Codex Curae Castrensis," for the instruction has collected and formulated as norms the various laws and regulations concerning a military vicar, his curiate and his chaplains [37].

As regards the United States, the decree of erection [11, 42, and Appendix B] regularly identified by the first three words of its Latin text, Mysticam Petri Naviculam, together with Sollemne Semper determine the ecclesiastical powers, rights and obligations of the Military Vicar for the United States. Although this discussion is particularized to the United States Vicariate, it is nonetheless applicable mutatis mutandis to any presently existing, formally erected military vicariate.

In a great many respects the office of military vicar is very similar to the office of a local ordinary, of a personal ordinary, of a vicar apostolic, and of a resident bishop, all as defined by the Code of Canon Law [10]. However, in many other respects it is a unique, new institution in the Roman Catholic Church.

It has been contended that a military vicar has jurisdiction equivalent to that of an ordinary of a place [34]. Likewise this has been denied [25, 27, 37]. Both positions base their stand on Canon 198 which classes jurisdiction as either local or personal [10]. Only one commentator considers a military vicar to be a vicar apostolic [29]. No one up to the present time has asserted that a military vicar must be equivalent to a resident bishop. It is the contention of this thesis that in the mind of the Holy See a military vicar is an entirely new species of ordinary by way of exception to the common law as a necessity due to the permanent state of armed encampment in which the world exists. This can be demonstrated with an examination of the general characteristics of the office, and then of its specific powers, rights, and obligations.

A. GENERAL CHARACTERISTICS

The general characteristics of the military vicar's office can be specified in five terms: vicarious, special, personal, ordinary, and cumulative.

Since a military vicar exercises his office in the name of the Roman Pontiff, and not in his own name, the office is not proper, but vicarious [5, 27, 29, 37].

The general instruction states that whoever has the position of military vicar is endowed with ordinary yet special jurisdiction to be exercised towards the spiritual good of those faithful who have been committed to him [25, 37]. The decree of erection for the United States of America states that the Military Vicar will enjoy a special jurisdiction [11, 42]. Neither document specifies what is meant by the term "special", and the Code of Canon Law is silent in the matter. Mariani says that the jurisdiction of a military vicar is special because, being merely personal, subject to certain limitations, and non-exclusive, it does not fall under any of the codified forms strictly interpreted [27]. According to Pugliese the term is used because the military vicar's jurisdiction encompasses a distinct group under particular conditions [37]. It would seem that both opinions apply since they contain no mutual contradictions. To this may be added that the term also refers to the hybrid nature of the office.

Both documents specify that the jurisdiction which a military vicar enjoys is personal. Sollemne Semper spells this out by stating that it is extended only to those subjects who are mentioned in the decree of the Sacred Consistorial Congregation that appoints a military vicar and establishes

his vicariate [25, 27, 29, 37, 41]. The following section contains a list of specific subjects for the United States Vicariate.

Both documents specify that the jurisdiction exercised by the Military Vicar is ordinary, that is, it is not delegated. According to Canon 197.1, jurisdiction is ordinary when the law attaches it to an office, and delegated when it is committed to a person [2, 4, 5]. The office of the Military Vicar, then, is exercised in virtue of the decree of erection which has the force of law [25, 29].

Mysticam Petri Naviculam states that the jurisdiction of the Military Vicar is cumulative with local ordinaries in accordance with the norms of the instruction Sollemne Semper. The instruction states that this jurisdiction is not exclusive, and thus it does not in the least withdraw the persons, the posts, and the places reserved for the armed forces, from the power of the local ordinary; nor does this jurisdiction in any way give rise to any exemption [4, 25]. However, it is further specified in both documents that the authority of local ordinaries and local pastors is to be exercised only secondarily, namely, whenever the Military Vicar and his chaplains are absent or lacking, after conferring, as far as may be called for, with the Military Vicar. Therefore, the primary and principal jurisdiction is reserved to the Military Vicar [11, 25, 37, 41, 42]. The office is not necessarily cumulative in the sense that every military vicar is at the same time a local ordinary; O'Rourke cites five

countries in which the Military Vicar has no other post [35]. Nonetheless, Mysticam Petri Naviculam provides that the office of Military Vicar for the United States is now, and in the future shall be, held by the current Archbishop of New York, who consequently possesses a double, cumulative jurisdiction [11, 42].

B. SPECIFIC POWERS, RIGHTS, AND OBLIGATIONS

The office of military vicar does not appear in the list of ordinaries in Canon 198.1 [10]. The two types listed are ordinaries of places and superiors of clerical exempt religious. These latter are sometimes referred to as personal ordinaries because their jurisdiction is limited to a particular group or class of persons belonging to a certain religious institute, rather than to a territory as such [2, 5]. Because his jurisdiction is personal, a military vicar would seem to fall into this second class. However, as will be demonstrated, the powers of a military vicar far exceed those of a personal ordinary as specified throughout canon law. Further, because many of these powers are the same as those inherent in a local ordinary, in a vicar apostolic, or in a resident bishop, there is a similarity between a military vicar and these offices that borders on, but does not constitute in the strict sense, equality of jurisdiction. That is, once again, to be seen in the specifications of the decree of erection in the light of the general instruction compared with the attributes of these three other offices as delineated in the Code of Canon Law.

Ordinaries of places are directly responsible for the care of the souls of the faithful within territorial limits [5]. A personal ordinary in the sense of the Code is also responsible for the souls of the religious subjects, but his basic purpose is the internal government of his own institute [5]. The former office is a logical procession from the concept of paster, for the local ordinary is the sole pastor of his territory; his priests share this pastoral role only insofar as they are extensions of him [2, 5]. The latter office derives from an arbitrary arrangement primarily for the purpose of good order and discipline as a means of observing the evangelical counsel of obedience; the religious superior is the sole dominative power in his institution [2, 5]. The office of the Military Vicar is a hybridized fusion of elements of these two. By instructional definition his jurisdiction is limited to a specific class of people. But just as clear is the ubiquity of this power, for it is exercised in whatever place his subjects are stationed, i.e. "In permanent military camps and in places for military personnel...." [11,42]. That the Military Vicariate arises from the necessity of pastoral care for these souls is evidenced in the opening paragraph of Mysticam Petri Naviculam. Hence, the Military Vicariate is a supra-territorial "diocese" embracing those who undertake military life and who are connected in any way with the armed forces. It is not limited to a territory, for its territory is defined by the presence of service personnel rather than geography.

As has been stated previously, the jurisdiction of the Military Vicar is cumulative in several ways. This is not an innovation, for the combined jurisdiction of local ordinary and of religious superior of an exempt clerical body is in effect over the same persons at one and the same time, per Canon 500 [1, 10]. However, the jurisdiction of the personal ordinary in such a case is not specifically the same as that of the local ordinary. Yet the terminology of the decree of erection leaves no doubt that the jurisdiction which the Military Vicar enjoys with the local ordinary over military personnel is specifically the same, since that jurisdiction exercised primarily and principally by the Military Vicar is exercised secondarily by the local ordinary in the absence of the Military Vicar and his chaplains [11, 42].

From the chaplain's point of view this results in the unusual position of a triple obedience. Since he is in no way excardinated from his diocese of origin, he remains bound to his own bishop or provincial who has, in a sense, loaned him to the Military Vicar [25]. The Military Vicar has a primary jurisdiction over the chaplain, but since this is cumulative with the local ordinary of the chaplain's assigned station, the chaplain is also subject to the local ordinary [11, 42].

The subjects of the Military Vicar, although limited as a general class, include a great many more types than the actual service personnel. Thus there are included not only all secular and religious priests on permanent or temporary duty as chaplains for the armed forces of the United States, but

also, those priests assigned as chaplains in Veterans Administration hospitals and domicilaries. They include not only members of the Army, Navy, Marines, and Air Force, but also those who serve in the Coast Guard, National Guard, Air National Guard, or Civil Air Patrol, as long as they are living in common in an official military format. If the families, including servants and all relatives, of members of these armed forces habitually live with them here or abroad, even the Catholic family of a non-Catholic service person, they too come under the Military Vicar's jurisdiction. Likewise included is anyone attached to and residing at any military installation, including hospitals, schools, housing areas, etc. [11, 42]. By decree of the Sacred Consistorial Congregation the Vicariate was further extended to include all foreign based members of the military government, government of occupation, government of the United States and their families [7]. Obviously, since this is a matter of ecclesiastical jurisdiction, the base reference is always Roman Catholic personnel.

While it is true that a military ordinary is a vicar of the Apostolic See, nevertheless he is not a vicar apostolic, at least in the strict sense intended by canon law. Canon 293.1 defines a vicar apostolic as one who is appointed by the Holy Father to govern territories not yet erected into dioceses, i.e., missionary [2, 5]. Likewise, a military vicar cannot be included in the category of resident bishop

according to Canon 329, because the military vicariate in and of itself does not require episcopal character for existence. In other words, the office of military vicar depends on sacred orders per accidens, not per se; yet the operation and functioning of the vicariate depends on sacred orders per se, not per accidens [25, 26]. Nevertheless, de facto, every military vicar appointed by the Holy See was or is a bishop or archbishop. It would make no sense to appoint a non-bishop to be a military vicar who in turn would need somehow to acquire a bishop for the complete availability and administration of the sacraments of his charges [35]. Further, apart from those acts which depend on sacred orders, a military vicar has many of the same rights and faculties as have residential bishops, in much the same way as do vicars and prefects apostolic according to Canon 291.1 [2, 5]. These rights and faculties are expressly stated either in the instruction Sollemne Semper or in the decree of erection, for the United States Vicariate, Mysticam Petri Naviculam; or they are indirectly stated in these same documents by reference to applicable sections of the Code of Canon Law.

Thus we find that the Military Vicariate of the United States consists of "a Military Vicar, Auxiliary Bishops appointed by the Holy See, chaplain-delegates or major chaplains, where they are necessary, and military chaplains or minor chaplains" [11, 42].

With reference to the Military Vicar himself, the following points are to be noted:

Canon 340 requires that a resident bishop make a quinquennial report to the Holy See upon the state of his diocese. Likewise, Canon 300 requires this report from all vicars and prefects apostolic on the state of their vicariates or prefecture [2, 5]. Paragraph 9 of Solemne Semper requires the Military Vicar to make a report to the Sacred Consistorial Congregation every third year concerning the activities and condition of the Vicariate [4, 25, 41]. Mysticam Petri Naviculam repeats this injunction and prescribes that the report be made according to the formula set forth by that Congregation [11, 42].

According to the norms of Canons 306 and 339, vicars and prefects apostolic and resident bishops are enjoined to offer the Mass pro populo on certain days during the year [2, 5]. Paragraph 11 of the general instruction expressly exempts the Military Vicar and his chaplains from this obligation [4, 25].. However, "if indeed the Chaplains receive a salary or a notable reward, the Military Vicar shall be able to oblige them to apply the Mass pro populo at least on the days prescribed in Canon 306; let this be the norm also" [4, 25, 29, 37, 41]. Faculty 17 in the current pagella for United States military chaplains reads:

17. To transfer to another day, the application of the Missa pro Populo. You are not bound to the Missa pro Populo on those days binding the Latin pastors in this country but you are bound in justice to offer the Missa pro Populo "saltem" - "at least" - on the following days: Christmas, Solemnity of Mary (Jan. 1), Easter, Ascension, Pentecost, Assumption, Immaculata Conception and All Saints. You are urged to offer Mass on other days out of charity for those entrusted to your care [11].

Canons 993.4 and 994 require the local ordinary to issue testimonial letters for candidates for orders, where applicable [2, 5]. Paragraph 18 of Sollemne Semper requires the Military Ordinary to issue these letters "to those who, when they had served in the Army, aspire to enter Religion or to Sacred Orders, as often as according to the norms of the sacred canons testimonial letters are required from the Ordinary of the place." [4, 25, 37, 41]. O'Rourke carries this one step further in establishing a case for the Military Vicar to grant title to ordination under title of service to that ordinariate [35]. It is interesting to note that from this single approach, an extremely strong argument arises establishing the possibility of a non-territorial diocese with the Military Ordinariate running the gamut from incardination through ordination.

Another striking provision of the decree of erection which illustrates the unique character of the Military Vicar is that relating to vacancy of office. First is given a rule of precedence:

When the office of Military Vicar shall become vacant the governing of the Military Vicariate, unless the Holy See has provided otherwise, shall pass to the senior Auxiliary Bishop or, if there is no Auxiliary Bishop, to the senior major chaplain or chaplain-delegate, in accordance with canon 106, n. 3 of the Code of Canon Law, until such time as the new Archbishop of New York has taken possession of his see. [11, 42]

Canon 106.3 regulates precedence between different ecclesiastical persons of whom none have authority over others. Then follows a general designation with the office as specified

in the Code. He who governs the vacant Military Vicariate is not designated as vicar capitular by the decree of erection, but nevertheless he is endowed with all the faculties and obligations of this same office, with any changes necessitated by the uniqueness of the Vicariate. Canons 429 to 444 inclusive, therefore, are applicable here since they spell out the duties of a vicar capitular, although as found in the government of a vacant territorial see [2, 5, 29]. In addition it is to be noted that the vacancy in the Vicariate is not filled by the person who fills the vacancy of the Archdiocese of New York until a new archbishop is named. The implication of separate but equal is cogent.

Canons 341 and 342 oblige resident bishops to make a visit ad limina every five years for European dioceses and every ten years for others. Since these terms coincide quite often with those on which the diocesan report is due, the report can be presented simultaneously. Canon law provides that this duty may be fulfilled through a coadjutor, or, with the permission of the Holy See, through a representative who must be a priest of the reporting diocese [2, 5]. By decree of the Sacred Consistorial Congregation, the visit ad limina is required of all military vicars [13.b]. The requirements of this decree are precisely the same as those of Canons 341 and 342. The decree also notes that since the military vicariate can be held in double jurisdiction with a particular resident bishop, both obligations regarding the visit can be satisfied with one and the same visit.

Another point of comparison with a local ordinary is that a military vicar has the faculty of producing an Ordo for the official liturgy of his chaplains, insofar as circumstances would recommend this to him, in accordance with the common laws of the Church and current instructions of the Sacred Congregation of Rites [4, 27, 29, 37].

With respect to both Quinquennial and Decennial Faculties, Sollemne Semper states: "The Military Vicar is able to obtain, as other local ordinaries, Quinquennial Faculties, and also the Decennial Faculties in places where such are customarily granted." [4, 27, 29, 37].

Concerning auxiliary bishops, the following points are to be noted:

The decree of erection makes reference to auxiliary bishops four times. Two of these citations have already been noted; one in connection with the personnel constituting the Military Vicariate, and the other in connection with vacancy of office. The third reference gives Auxiliary Bishops of the Military Vicar the faculty of licitly hearing the confession of anyone who comes to them in places reserved for military personnel. The fourth and most important reference is, "The Auxiliaries of the Military Vicariate are bound by the same duties and obligations as the Auxiliaries of Bishops in the Code of Canon Law." [11, 42]. This is another instance where the common law clearly refers to a situation involving a resident bishop, but which the special character of the

military vicariate includes by unambiguous reference. At the present time there are two Auxiliary Bishops to the Military Vicar for the United States [7].

Chaplain-delegates or major chaplains also provide points for comparison. Just as the Code provides the resident bishop with his vicar general, the decree of erection makes provision for a similar office in the Vicariate by assigning to chaplain-delegates or major chaplains those functions which, with any required changes the Code attaches to the office of diocesan vicar general [2, 5, 41]. Because the armed forces of the United States are to be found in almost any territory on or off the earth, it is not redundant that there are at present twenty-five Chaplain Delegates and four Assistant Vicar Delegates assigned to twenty-five specific areas of operation all over the world [7, 11].

With reference to the general governmental aspects of the Military Vicariate, the decree of erection provides for the establishment of a curia for the Vicariate "along the lines of a diocesan curia." In general, the Code of Canon Law distinguishes three divisions in a diocesan curia according to organization, function, and personnel: administrative, judicial and archives.

In the administrative division, the Code makes provision for the Vicar General (Canons 366-371), Diocesan Consultors (Canons 423-428), Pastor Consultors and Synodal Examiners (Canons 385-389) [2, 5, 10]. The first office, Vicar General, is exercised by the Chaplain Delegates as previously described.

The other three offices are not yet found in the Vicariate since at the present time the nature of the jurisdiction does not require them.

In the judicial division the Code provides for the tribunal offices of Officialis and Vice Officialis (Canons 1572-1573), Promoter of Justice and Defender of the Bond (Canons 1586-1590), Synodal or Prosynodal Judges (Canon 1574), Auditors (Canons 1580-1584), Couriers and Constables (Canons 1591-1593) [2, 5, 10]. However, since in Canon Law there is no such entity as a military domicile, but only a parochial or a diocesan domicile, a military vicariate as such cannot set up a tribunal for hearing cases involving its members [2, 4, 25, 27, 29, 41]. Accordingly, the devree of erection makes provision for this by assigning the Metropolitan Tribunal of the Archdiocese of New York in first instance, and the Metropolitan Tribunal of the Archdiocese of Philadelphia in second instance, to undertake the cases of subjects of the Vicariate, whether these are contentious cases among themselves or criminal cases [11, 42].

In the archives division the Code provides for the offices of Chancellor and Vice Chancellor (Canon 372) and Notaries (Canons 374 and 1585), and makes admirable regulations for the custody of the diocesan archives [2, 5, 10]. Paragraph 6 of the general instruction provides that the usual register of baptisms, confirmations, marriages, deaths, be kept either in the general archive of the vicariate or in the central

archive of the chaplains, if there should be one [4, 25, 29, 37, 41]. In the present roster of personnel, the Military Vicariate lists a Chancellor and two Vice Chancellors [7, 42]. Although a chancellor is a notary by virtue of his office, the duties of notaries relative to the tribunal are handled by the metropolitan tribunals previously cited [5]. The United States Military Vicariate maintains its archive at its offices in New York City. It contains some two million such records at the present time. Since it has inputs from a possible 2600 priests in all its categories, involving almost two million Roman Catholic military personnel, their dependents, and other subjects previously specified, it is an invaluable element in providing these subjects and priests with a sense of unity and cohesiveness found only in civilian parishes and dioceses. It may also be noted that this system forms the basis for citing the Military Ordinariate as the parish of baptism and record, regardless of where the military place of baptism occurred; and it remains so even after the person so baptized leaves the service and jurisdiction of the Military Vicar [11, 26].

IV. CIVIL JURISDICTION

In any discussion of jurisdiction afforded the Military Vicar by civil law, it is necessary to keep certain distinctions in mind. The first and most important is the distinction between the concept of endorsing agent and that of the endorsement itself. The endorsing agent or agency is whatever a religious denomination or faith group, recognized as such, designates to certify that one of its members is duly authorized to exercise religious ministry in the name of that body. The endorsement in itself is that certification, and does not of itself have to come from an endorsing agent; for example, if so specified, an endorsement could be constituted by letters of recommendation from persons not necessarily formally authorized to do so or prohibited from it [1, 48]. The Roman Catholic Military Vicar for the Armed Forces of the United States is that Church's authorized endorsing agent. However, long before the existence of that agency in any form, Catholic chaplains could obtain ecclesiastical endorsement by presenting five letters of recommendation from fellow Catholic clergy certifying his ordination and current good standing. This has been noted in Chapter II of this thesis.

The second distinction is between law as it exists and practiced and tradition which may presume to have the force of law or to be fortified by non-existent law [34].

The third distinction is that separation of church and state must not be confused with cooperation between church and state [1, 14, 23, 31, 43, 47, 48].

In light of these distinctions, it is asserted that formal civil law does not grant any civil jurisdiction over military personnel, including chaplains, to any ecclesiastical endorsing agency. However, civil law establishes authority for governmental agencies to cooperate with these religious groups in promoting the free exercise of religion and providing ministers authorized, both in civil and ecclesiastical law, to so function. The following is a defense of this assertion.

Today's system of military chaplains in American cannot be understood apart from the special civilian relationships and procedures of ecclesiastical endorsement. All chaplains are volunteers, but they are not free agents; they represent recognized religious institutions which must certify their fitness for the chaplaincy and grant them credentials of good standing as well as any ecclesiastical authority required for valid and licit ministry [23].

In the colonial period and in the early years of this country as an independent republic, the arrangements for securing chaplains were irregular, haphazard and largely informal (cf. Chapter II). This was consistent with the philosophy of not having standing armed forces and reliance for defense on citizen-soldiers as militia. Even in later years when the nation went to war a number of times, mobilization always was on a crash basis which made it extremely

difficult to establish and maintain any orderly procedures immediately. During the past sixty years as the world has progressed toward a state of permanent armed encampment, standing military forces (and therefore military chaplains) are the order of the day. Nevertheless, although in actual practice ecclesiastical endorsement is an indispensable requirement to assure fitness, competence and responsibility in the recruitment of chaplains, the precise legal and statutory basis for endorsing agents as a sine qua non is a moot question [1, 47].

There exists in various sections of Title 10 of the United States Code, the fundamental law of the land for the armed forces, no specific reference either to ecclesiastical endorsement for chaplains or to ecclesiastical endorsing agents. In Title 10, the only specification is the authorization to various officials to determine the professional qualifications for candidates to the chaplaincy: Section 3293 covers the Army, 5876 the Navy, and 8293 the Air Force [44]. This filters through the chain of command and appears in the various service manuals, such as was quoted in Chapter I of this thesis, and establishes practices (which through time may become at least quasi-traditions). For the most part, both the government and the religious bodies seem to be satisfied with the cooperative religious venture, despite the lack of law to establish a contractual relationship or other formal legal obligation between them [1, 22, 30, 43, 47, 48].

This may in part be due to a mistaken concept of the chaplain's role of commissioned officer.

It is clear from current practice and directives that no one is commissioned a chaplain in any service unless endorsed by the religious body he claims to represent. This much of an endorsing agent's span of control is certain. Uncertainty and confusion arise after this initial point. At the risk of redundancy, it is noted that the point at issue is concerned with endorsement as it effects statutory commissioning of the chaplain as an officer, rather than endorsement as it effects ecclesiastical authorization of the chaplain as religious minister. In other words, the question is the degree of control of an endorsing agent over a commissioned chaplain apart from ministry.

Up to the beginning of the present decade, most if not all endorsing agents stated that withdrawal of ecclesiastical endorsement would result in automatic discharge of the chaplain. It is not clear that this position had ever been challenged by an officer-chaplain who, after having had his ecclesiastical endorsement withdrawn for some reason, but not being in violation of any military regulations, desired to remain in the service in a non-chaplain capacity for which he is clearly qualified, perhaps by sub-specialty. The provisions of tenure afforded to all officers in a regular commissioned status or otherwise provided in law surely must be understood to be included in the concept of the military

system to which endorsing agents subscribe by the very act of endorsement [1, 30, 48].

For example, the author of this thesis is a Roman Catholic priest duly endorsed by the Roman Catholic Bishop of Camden and the Roman Catholic Military Ordinariate for commissioned status in the Chaplain Corps of the United States Navy, all as laid out in article 1020120.5 of the Bureau of Naval Personnel Manual [6]. At the same time, presuming his successful completion of the degree requirements of which this thesis is a part, he is qualified with a sub-specialty in personnel management that is in no way dependent on his primary qualification as clergyman. As a commissioned officer in the Regular Navy he is afforded the possibilities of tenure and its attendant security on the proviso that he not give cause for dismissal as contained in Title 10 of the U. S. Code, Navy Regulations, the Uniform Code of Military Justice, and other current directives [6]. Of itself, withdrawal of ecclesiastical endorsement does not violate the preceding proviso, and is not grounds for punitive action or dismissal by military authorities; it signals only the cessation of ecclesiastical authorization to function as a minister of religious activities in the name of a religious body. It is posited that this assertion is viable in the absence of any legal provision to the contrary. Therefore, should this chaplain's ecclesiastical endorsement be withdrawn by the Military Vicar for reasons that do not violate the preceding

proviso, all other accommodation of naval procedures being made, it would not be illegal, illicit, or unlawful for the Navy to employ him in his sub-specialty and retain him in the Navy, should he so desire.

Of course it goes without saying that endorsing agents would withdraw ecclesiastical endorsement of a chaplain for nothing less than serious cause and with just and honorable reasons. Further, this is not to deny that a chaplain would respond other than positively to the moral persuasive force of religious obedience to the endorsing agent to the degree that it is substantive to his ordination, as in the case of Catholic clergy. What is intended here is to point out that the endorsing agent's span of control in civil jurisdiction extends only to initiating a clergyman as a commissioned chaplain, that even this is provided for by service directives and practice rather than by civil statutes, and that this centers on the endorsement primarily and the endorser secondarily.

V. CONCLUSION

The Roman Catholic Military Vicar for the armed forces of the United States has been shown to have ecclesiastical jurisdiction not fully equivalent to any single office as contained in that Church's common law. He is not equal to a local ordinary, because the Ordinariate is by nature ultra-territorial. He is not merely a personal ordinary, for his rights, duties, obligations, and privileges far exceed those assigned by the Code of Canon Law to any personal ordinary. He does not fit the category of vicar apostolic, on the grounds that his subjects are not missionary matter in the sense that the Code defines this. Nor can he be classed simply as a resident bishop, since he does not have a territorial diocese in the sense that the Code defines one.

Yet, because his office, characterized as being personal, vicarious, special, and cumulative, includes all the essential rights, duties, powers, and obligations of various types of ordinary, there can be no doubt that a military vicar is an ordinary in the full canonical sense, although very unique. He has full and complete ecclesiastical jurisdiction necessary to minister to the religious needs, order, and discipline of the people entrusted to his care without recourse to anyone except the Pope, as is the case with the fullest form of ordinary jurisdiction. This authority exists apart from any

civil law. While it may cooperate with civil law to promote functional facility, it is independent of civil law for its substance.

Thus the first conclusion is that the Military Vicar is a new species of ordinary, a hybridization of various aspects of all the previously cited ordinaries, with full ecclesiastical jurisdiction over his military subjects, both laymen and clergy, that cuts across all service boundaries and even includes other relevant federal agencies. He is not defined as such in the Code of Canon Law since the office was not in existence when the Code was promulgated in 1917. When the Code is revised it is certain that the office of military vicar will appear among the list of ordinaries.

This in no way detracts from the image and reputation the Military Vicar currently enjoys in the United States. For Roman Catholics in the service, he is their bishop, their link to the apostolic tradition of their Church, their ecclesiastical anchor and stability in their efforts to practice their religion under the unstable and changing conditions inherent in military life.

As to civil jurisdiction, there is not this clarity and precision. The validity of the constitutionality of the chaplaincy while not addressed in this thesis, has stood the test of time. This same time has seen the development of the need for candidates and members of the chaplaincy to have ecclesiastical approbation of the religious bodies claimed to

be represented in the chaplaincy in response to federal action to supply the religious needs of military personnel. However, the national government is intended neither to be a minister of religion, nor to promote a military religion; it is an administrator of the religious support due its members who both feel a need for it and solicit it. This is effected by non-contractual cooperation between the federal government and religious bodies. The federal government on its part respects and protects the ecclesiastical jurisdiction of every religious body as it is extended by that body's duly authorized ministers and members in the military service. In return for the right to extend their religious ministry to military personnel, the religious institutions accept the placing of their ministers and members under the principle of military command and its concomittant system.

The second conclusion, then, is that there is no evidence to support any claim by endorsing agents to formal civil jurisdiction over chaplains as commissioned officers. The reason for the absence of this jurisdiction in civil law is subject only to conjecture and speculation. Perhaps it is due to an extreme effort to maintain the separation of church and state. Perhaps it is nothing more than indeliberate oversight that will be corrected should either the government or the religious bodies or both find it expedient so to act. At the present time, from existing practices it does not seem that ecclesiastical endorsing agents need formal civil

jurisdiction to accomplish their mission, so long as the government makes no incursion into their free exercise of ecclesiastical jurisdiction.

This position is the product of a largely unwritten but carefully worked out balance that provides much:

a. In providing the armed forces with their chaplaincies, the government takes at least these actions that effect church-state concerns (and in the question of what civil jurisdiction over chaplains is extended to endorsing agents, that is the point at issue): It employs clergymen for the conduct of religious programs; provides the funds, materials and facilities for these programs; provides supervisory chaplains (also clergymen) to direct religious programs and personnel; provides and pays personnel to assist chaplains; pays chaplains and gives them military rank and all rights, benefits and privileges due an officer; gives them some pre-service and in-service training; provides them with opportunity and funds for professional growth and denominational contact; refers military personnel to chaplains for counseling as part of various evaluative processes; provides and accommodates calendar and daily schedule to serve the needs of the religious program as far as possible; extends religious program participation to military dependents and other civilians where possible; establishes and implements a quota system for procuring chaplains which reflects denominational proportions among service personnel; accepts the ecclesiastical endorsement of

denominations as a prerequisite for commissioning of a chaplain; guarantees the chaplain freedom for religious aspects of his work; provides procedures for and considers complaints by chaplains if their freedom has been though infringed; consults with the denomination about problem chaplains; and in some measure aids the chaplain's (i.e. church's) programs by direct or indirect encouragement of participation by military personnel.

b. The various churches, then, in some way, separately as in the case of the Roman Catholic Military Vicar or collectively as in the case of the General Commission on Chaplains and Armed Forces Personnel, take at least these actions that affect and/or cooperate with the government program: They organize the church's response to the government chaplaincy program; train clergymen who intend to enter the chaplaincy; recruit chaplains; set educational and religious standards for eligibility to the chaplaincy; endorse clergymen for the chaplaincy, and withdraw that endorsement as need be; represent their chaplains to the appropriate military authority in case of grievance; require reports of chaplains on their work; consult with military concerning problem chaplains; encourage personnel entering the armed forces to utilize the religious program offered to them.

These two lists, minimal and far from exhaustive, placed side by side indicate the subtlety and complexity of the church-state issues in the chaplaincy programs of the armed

forces and in the status of endorsing agents in civil law. The chaplain is under the care and discipline of his church for religious purposes. He is also under the system of military command for the military aspects of his service. He serves two masters. He and his authorities, ecclesiastical and military, must all show large amounts of wisdom and restraint to at once promote the interests of the state and the church in proper proportion without improper compromises and improper exploitation of the power and authority of one by another.

APPENDIX A

ENGLISH TRANSLATION OF THE INSTRUCTION SOLLEMNE SEMPER¹

SACRED CONSISTORIAL CONGREGATION INSTRUCTION REGARDING MILITARY ORDINARIATES

It has always been a solemn concern to the Holy See that the general laws of the Church be piously and conscientiously observed by all her members everywhere, as much as possible; nevertheless on account of special circumstances of times and men, sometimes new norms seem necessary to be decreed to care for the new needs of the faithful. Thus the Sacred Consistorial Congregation derogates from the common law wherever necessary by making some special decrees:

1. Whoever has the position of Military Vicar is endowed with an ordinary yet a special jurisdiction to be exercised towards the spiritual good of those faithful who have been committed to him.
2. The jurisdiction which the Military Vicar enjoys is personal, that is, it is extended to only those subjects who are mentioned in the Decree of the Sacred Consistorial Congregation appointing him and establishing his Military Vicariate, even if those same subjects should reside in military posts and in various places especially allocated to the soldiers.

The jurisdiction of the Military Vicar is not exclusive, and thus it does not in the least withdraw the persons, the posts, and places reserved for soldiers, i.e. military barracks, naval armories, airfields, military hospitals, etc., from the power of the local Ordinary; and this jurisdiction does not in any way beget any exemption, nor does the position as a Chaplain beget any excommunication from the diocese.

¹This translation is from a paper read October 12, 1951, by Rev. Joseph F. Marbach, J.C.D., Assistant Chancellor of the Military Ordinariate, U.S.A., at the Annual Meeting of the Canon Law Society of America in Chicago.

Nevertheless in these place the local Ordinaries and the pastors should exercise a power over the subjects of the Military Vicariate that is only secondary: it is thus necessary to have some mutual agreement whereby their works may be united and to have concord in carrying out various actions and functions especially outside the limits of the military posts.

3. A canonical domicile is not recognized except a diocesan or parochial domicile.

For causes indeed of the subjects of the Military Vicariate — whether contentious causes among themselves or criminal causes — the Military Vicar elects some diocesan or metropolitan Tribunal once and for all and this elected Tribunal must be approved by the Holy See.

4. As often as new buildings especially allocated to soldiers, or ships, or airplanes must be blessed, and in other cases of this nature, this norm is observed:

if the ceremony is ordered by the military commanders, the Military Vicar imparts the blessing: if he is unable to do it, the Ordinary of the place in which the ceremony is arranged, after the Military Vicar advises him of his inability to come, gives the blessing by his own authority;
if the ceremony indeed is ordered by the civil authorities, only the Ordinary of the place is competent in this case.

5. The Military Vicar should inform the local Ordinaries about the Chaplains who are sent into their dioceses or who leave these same dioceses.
6. The usual registers of baptisms, confirmations, marriages and deaths, inscribed according to the usage approved by the Church in her Roman Ritual (Tit. XII, I-IV), the Military Vicar should order to be kept either in the general Archive of the Military Vicariate or in the central Archive of the Chaplains if there should be one; in this latter case however an obligation is imposed of sending to the Curia of the Military Vicariate an authentic copy of these same books at the end of every year, according to the rule set forth in Canon 470, 3.
7. The Military Vicar has the faculty of producing an Ordo for the recitation of the Divine Office and for the Offering of Mass for the use of the Chaplains, insofar as circumstances would recommend it to him, observing in every detail the common laws of the Church, especially the norms prescribed in the

Constitution Divino affiatu of November 1, 1911 (AAS, III [1911], 633-651), and the Motu Proprio Abhinc duos annos of October 23, 1913 (AAS, V [1913], 499), and also the Instructions that have been issued or may be issued by the Congregation of Sacred Rites. This Ordo the Chaplains are able to use everywhere when they celebrate Mass for the benefit of the soldiers, and other priests can use this Ordo as they offer Mass in the churches or oratories reserved for the soldiers.

8. The Military Vicar is able to obtain, as other local ordinaries, Quinquennial faculties, and also the Decennial faculties in places where such are customarily granted.
9. The Military Vicar is obliged to make a report to this Sacred Congregation every third year concerning the activities and condition of the Vicariate.
10. Each Chaplain is exercising the care of those souls which have been entrusted to him by the Military Vicar shall remember that he is bound by the duties and obligations of pastors, insofar as these correspond to his special circumstances.
11. The Chaplains, just as the Military Vicar, are not at all bound by the obligation of offering the Mass Pro populo; if indeed the Chaplains receive a salary or a notable reward, the Military Vicar shall be able to oblige them to apply the Mass Pro populo at least on the days prescribed in Canon 306; let this be his norm also.
12. Those priests who are chosen to be Chaplains "should gleam with the brightness of an extraordinary sanctity, and should be worthy ministers of Christ, faithful dispensers of the mysteries of God, effective helpers of God instructed for every good work" (Pius PP. XII, Exhortation, Menti Nostrae, AAS, XLII [1950], 658) so that, aroused by the inspiration of their vocation, they might actively fulfill their parochial function as if an affectionate service, and, what is most important, that they might fight for souls so that their Apostolate might shine forth from the living form of Christ. In this particular question, the Military Vicar should have clearly before him the exhortation of our Supreme Pontiff: "We beseech you, Venerable Brethren, that, as much as possible, you should not plunge inexperienced priests into the middle of such works, nor assign them to places far removed from the principal city of the dioceses or from its larger cities. For if they could stay in a state of life of this kind - far

removed, unskilled, exposed to dangers, wanting in prudent teachers — without a doubt these same priests and their eagerness would be able to come to various misfortunes" (Exhortation, *Menti Nostrae*, l.c., p. 692).

13. Also, the very best and skilled religious priests should be selected to the post of Chaplain, with the observance nevertheless of the special rules given for them by the Sacred Congregation in charge of the Affairs of the Religious, and indeed, if it is possible, these should be sent to places where there may be a house of their Religious family.
14. The Chaplains should wear the ecclesiastical habit according to the legitimate customs of the places, nor should they wear the uniform unless their duties should advise it or the civil laws order it, using nevertheless at the same time some special sign of the ecclesiastical office.
Likewise, if the custom exists, they ought always to wear the clerical tonsure, or crown, according to the rule of the sacred canons.
15. In order moreover that the Chaplains may be moved by the wish and desire of fulfilling the Divine Will, it is fitting that a spirit of prayer should not in the least languish or grow sluggish in them. They should give themselves a constant nourishment — not only the Eucharistic Sacrifice devoutly offered, but also all those things which, approved by long usage, very forcefully bring it about that the souls of men keep from faults and strive after the more solid virtues: and it is recognized by all that among these, spiritual exercises enjoy the principal place.
16. The various forms and systems of a Christian Apostolate which today, because of the special needs of the Christian people, are of so great importance and of such great seriousness should be promoted by Chaplains who are accurately instructed and personally in union with this Apostolate.
17. The Chaplains should strive to be present at the conferences or meetings which take place according to Canon 131 in the diocese where they are stationed.
18. The Military Vicar gives testimonial letters to those who, when they had served in the Army, aspire to enter Religion or to Sacred Orders, as often as according to the norms of the sacred canons testimonial letters are required from the Ordinary of the place.

This present Instruction our Holy Father, Pius, by Divine Providence PP. XII, after hearing the report of the undersigned Cardinal Secretary of the Sacred Consistorial Congregation, deigned to ratify, and ordered it to be published. All other things to the contrary notwithstanding, even those that merit special mention.

Given at Rome, at the office of the Sacred Consistorial Congregation, April 23, 1951, on the feast of St. George the Martyr.

His Eminence Card. Piazza, Secretary

Rev. Giuseppe Ferretto, Assessor

APPENDIX B

ENGLISH TRANSLATION OF THE DECREE MYSTICAM PETRI NAVICULAM¹

SACRED CONSISTORIAL CONGREGATION
DECREE
ON THE ERECTION OF THE
MILITARY VICARIATE
UNITED STATES OF AMERICA

The Roman Pontiffs, guiding with the fullness of Apostolic power the mystical Bark of Peter which is threatened on every side by such great storms but which remains firmly and constantly afloat, leave nothing undone in order to strengthen the faithful to walk safely along the path of salvation.

Indeed in the United States of America the Catholic Church for many years, through its bishops and priests, has been carefully, vigilantly and paternally watching over those faithful who undertake military life and who are connected in any way with the armed forces.

In order that this ministry may be more and more exactly conformed to the norms of the sacred canons and that these same faithful may be more richly endowed with privileges and consolations proper to Military Vicariates, our Holy Father, by Divine Providence Pope Pius XII, after obtaining the favorable opinion of His Excellency, the Most Reverend Giovanni Amleto Cicognani, titular Archbishop of Laodicea in Phrygia and Apostolic Delegate to the United States of America, has graciously deigned to accept the petition of His Eminence, Francis Cardinal Spellman, Archbishop of New York and Military Vicar, in his ardent request for the erection of a Military Ordinariate.

¹This translation is from Vademecum for the Priests Serving the Military Vicariate of the United States of America (1974), 2-7, issued by His Eminence Terence Cardinal Cooke, Military Vicar, through the Military Ordinariate, 1011 First Avenue, New York, NY 10022.

Therefore, with the counsel of the undersigned Cardinal Secretary of the Sacred Consistorial Congregation, and with the consent, wherever necessary, of those having an interest or presumed to have an interest, the Holy Father by this present Consistorial Decree hereby erects and establishes the Military Vicariate of the United States of America.

The Military Vicariate, thus erected, will consist of: a Military Vicar, Auxiliary Bishops appointed by the Holy See, chaplain-delegates or major chaplains, where they are necessary, and military chaplains or minor chaplains.

The seat of this Military Vicariate and its curia -- established along the lines of a diocesan curia -- shall be located in New York.

By special Decree of the Sacred Consistorial Congregation the office of Military Vicar, both at present and in the future, shall be conferred upon the current Archbishop of New York, who will consequently possess a double cumulative jurisdiction.

The Military Vicar will enjoy a special personal jurisdiction, ordinary for both the internal and the external forum, cumulative with the jurisdiction of local Ordinaries in accordance with the norms of the Instruction on Military Vicars "Sollemne semper," issued on April 23, 1951 by the Sacred Consistorial Congregation.

In permanent military camps and in places reserved for military personnel, jurisdiction will be exercised primarily and principally by the Military Vicar; secondarily, namely, whenever the Military Vicar and his chaplains are absent or are lacking, by the local Ordinary and the pastor, by their own proper authority, after conferring, as far as may be called for, with the Military Vicar.

The following will be subject to the Military Vicar:

1. Secular and religious priests who are called on an habitual basis to the office of military chaplain for the armed forces of the United States of America; also those called on a temporary basis, during the time that they render their services.
2. Priests who are chaplains of hospitals commonly called "Veterans Administration Hospitals and Domiciliaries."

3. All the faithful: who actually serve in the armed forces of the land, air and sea; who, organized in military fashion, pertain in any way whatsoever to these same armed forces; or who are bound by the laws made for these armed forces.
4. The faithful who serve under the banners of those forces commonly known as Coast Guard, National Guard, Air National Guard, or Civil Air Patrol, as long as they are living in common in a military manner.
5. The families of those listed under n. 3, namely, the wives, children, servants, relatives who habitually live with them in this country or who accompany them in any manner whatsoever outside their homeland; likewise the Catholic family of a non-Catholic serviceman under the same circumstances.
6. All the faithful of both sexes, whether they are members of a religious institute or not, who are attached to hospitals, military schools, the above-mentioned Veterans Administration Hospitals and Domiciliaries and reside there.
7. All the faithful of both sexes who dwell on military bases or in homes reserved by the civil government for military personnel and their families.

Since in the United States of America, particularly in remote places, some military bases have been established after the manner of villages, where military personnel and their families occupy the homes, and since the local Ordinary cannot provide for their spiritual care through a pastor or a missionary or any other priest and cannot go there without grave inconvenience, His Holiness grants that all persons dwelling in the aforesaid villages are subject to the personal jurisdiction of the Military Vicar as long as these circumstances endure. The local Ordinary is to be notified in each individual case.

The Military Vicar appoints all chaplains, major or minor as the case may be, and all these are subject in every way to his ordinary power as long as they remain in their office of chaplain. As far as ecclesiastical discipline is concerned, military chaplains are also subject to the Ordinary of the place in which they happen to be; in urgent cases and whenever the Military Vicar is unable to provide, it will be proper for the local Ordinary to take action in their regard, even with canonical sanctions if the situation requires. The Military Vicar is to be advised immediately.

Regarding religious military chaplains, the Instruction "De cappellanis militum religiosis," issued on February 2, 1955 by the Sacred Congregation for the Affairs of Religious, is to be strictly observed.

The Auxiliaries of the Military Vicariate are bound by the same duties and obligations as the Auxiliaries of Bishops in the Code of Canon Law.

In order that the chaplain-delegates, or major chaplains, may properly govern those subjects placed under their care, they are assigned those functions which, with any required changes, the Code of Canon Law attaches to the office of Vicar General.

The military chaplains shall exercise the care of the souls entrusted to them with the duties and obligations of pastors in accordance with the Instruction on Military Vicars mentioned above.

Auxiliary Bishops and chaplains, both major and minor, can validly and licitly hear the confession of anyone who comes to them in places reserved for military personnel.

Regarding marriage of the subjects of the Military Vicariate, the prescription of Canon 1097, para. 2 of the Code of Canon Law is to be strictly observed, namely: as a rule a marriage is to be celebrated in the presence of the pastor of the bride, unless a just cause excuses. All those acts must be exactly accomplished which, according to common law, must precede and follow the celebration of marriage.

The Metropolitan Tribunal of the Archdiocese of New York in first instance, and the Metropolitan Tribunal of the Archdiocese of Philadelphia in second instance, shall undertake the cases of subjects of the Military Vicariate, whether these are contentious cases among themselves or criminal cases.

The Military Vicar shall present to the Apostolic See every three years a Report on the state of the Military Vicariate, giving the replies to the questions according to what is prescribed in the "Formula Servanda" issued by the Sacred Consistorial Congregation on October 20, 1956.

When the office of Military Vicar shall become vacant, the governing of the Military Vicariate, unless the Holy See has provided otherwise, shall pass to the senior Auxiliary Bishop or, if there is no Auxiliary Bishop, to the senior major chaplain or chaplain-delegate,

in accordance with canon 106, n. 3 of the Code of Canon Law, until such time as the new Archbishop of New York has taken possession of his see.

He who has then undertaken the governing of the Military Vicariate will have all and solely those faculties which, with any necessary changes, pertain to the Vicar Capitular, and he will be subject to the obligations of this same office. It will especially be his responsibility to notify the Sacred Consistorial Congregation of his having taken the office and to request its instructions.

To execute this Decree His Holiness has deigned to designate His Excellency, the aforementioned Most Reverend Giovanni Amleto Cicognani, granting him the necessary and proper faculties even to subdelegate for this purpose anyone vested with ecclesiastical dignity, with the obligation of transmitting as soon as possible to the Sacred Consistorial Congregation an authentic copy of the act of the accomplished execution.

His Holiness has ordered the present Consistorial Decree on these matters to be published to have the same force as if issued by way of Apostolic Letters with seal.

Given at Rome, at the office of the Sacred Consistorial Congregation, September 8, 1957, on the Feast of the Nativity of the Blessed Virgin Mary.

A.G. Cardinal Piazza
Bishop of Sabine and Poggio Mirteto
Secretary

Joseph Ferretto
Assessor

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